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11 INC.

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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

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17 L.A. PRINTEX INDUSTRIES, INC., a
18 California corporation,
19 Plaintiff,

20
21 v.
22 AEROPOSTALE, a Delaware
23 corporation; CHARLOTTE RUSSE, a
24 California corporation; KOHLS, a
25 Wisconsin corporation; MS.
26 BUBBLES, a California corporation;
27 RAD CLOTHING, a California
28 corporation; and DOES 1 through 10,
Defendants.

CASE NO. CV08-07085 DDP (Ex)

**[REDACTED] PROTECTIVE
ORDER**

Discovery Cut-off: March 1, 2010
Pre-Trial Conf.: June 7, 2010
Trial Date: June 7, 2010
Action Filed: October 27, 2008

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30 The Court has considered the Motion for Protective Order brought by Ms.
31 Bubbles, Inc. and Aeropostale, Inc. (collectively, "Defendants"), as well as the Joint
32 Stipulation submitted by Plaintiff and Defendants pursuant to Local Rule 37-2.

33 Finding good cause therefore, the Court hereby grants Defendants' Motion for
34 Protective Order and orders that a Protective Order be entered in this case as follows:

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1 **STATEMENT OF GOOD CAUSE:** This action involves claims for copyright
2 infringement under the Copyright Act of 1976, Title 17 U.S.C., § 101 *et seq.* The
3 parties, who are variously manufacturers and vendors of textile designs and apparel
4 retailers, are direct and/or indirect competitors of each other. A primary element of this
5 case is related to Plaintiff's claim that because of Defendants' alleged wrongful acts,
6 Plaintiff has lost substantial business relating to its copyrighted designs. The parties
7 therefore recognize that extensive discovery requesting information from the parties,
8 their vendors, customers and clients, including financial information, market
9 information and other commercially and competitively sensitive information may be
10 necessary to prove and/or disprove Plaintiff's claims and Defendants' defenses thereto.
11 There will also be multiple depositions of the parties' employees or agents and third
12 party vendors, customers or clients and such persons will likely be asked to answer
13 questions on these potentially sensitive subject areas. The parties, as competitors in the
14 industry, will likely be placed at a competitive or economic disadvantage if such
15 confidential and/or proprietary information is disclosed to other parties and/or the
16 public at large. This protective order ("Protective Order" or "Order") is therefore
17 necessary to avoid any prejudice or harm in the form of loss of competitive advantage
18 which would likely result if such information was disclosed in the absence of the
19 protections set forth herein. This Order is also necessary for the orderly management of
20 this litigation. Without this Order, the exchange of party information, as well as
21 information needed from third parties, including most importantly the parties' vendors,
22 customers or clients may become logistically very difficult, time consuming and
23 expensive.

A. Definition of "Confidential Information"

25 1. "Confidential Information," as used herein, means all information in
26 whatever form, such as oral, written, documentary, tangible, intangible, electronic, or
27 digitized now or hereafter in existence that:

28 (a) derives independent economic value, actual or potential, from

1 not being generally known to, and not being readily ascertainable by proper means, by
2 other persons who can obtain economic value from its disclosure or use;

3 (b) is the subject of efforts that are reasonable under the
4 circumstances to maintain its secrecy; and

5 (c) is otherwise regarded by a party as being confidential, private,
6 or proprietary in nature.

7 2. Confidential Information is unlimited in kind or form and includes, by
8 way of example only and without limitation thereto, information relating to the
9 following: any products, designs, specifications, tests, plans, studies, surveys,
10 manufacture, distribution, marketing, promotion, advertisement, sales, opportunities,
11 vendors, customers, financial matters, costs, sources, prices, profits, research,
12 development, analysis, know-how, show-how, personnel, strategies, or competition.

13 **B. Production of Confidential Information**

14 1. All efforts by any party or witness in this matter to designate any
15 information as "Confidential," shall be governed by the terms of this Order. The party
16 by whom any disclosure is made is the "Disclosing Party" and the party to whom any
17 disclosure is made is the "Receiving Party." By receiving any property designated as
18 "Confidential," the Receiving Party agrees not to disclose, publish, disseminate, or use,
19 other than as expressly permitted herein, any such property and will assure that all
20 reasonable efforts are made to prevent any unauthorized use, disclosure, publication or
21 dissemination of such property.

22 2. All Confidential Information produced by the Disclosing Party to the
23 Receiving Party in whatever form (e.g., documents, materials, things, testimony or
24 other information) during the course of this matter shall be designated "Confidential"
25 or "Confidential-Attorneys' Eyes Only" in accordance with the terms of this Order,
26 *infra*, prior to disclosure, by use of a reasonably conspicuous and prominent mark. In
27 the case of documents, the mark shall be on every page.

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1 **C. Levels of Confidentiality**

2 Any information designated as "Confidential" or "Attorneys' Eyes Only"
3 shall be restricted in accordance with the following levels of confidentiality:

4 1. "Attorneys' Eyes Only" -- Information designated as "Attorneys' Eyes
5 Only" shall be restricted to viewing, or copying by, and disclosure to:

6 (a) Attorneys acting on behalf of the parties in this matter;
7 (b) The office personnel employed by the counsel working under
8 the direct supervision of said counsel;
9 (c) The United States District Court for the Central District of

10 California and all clerks and other personnel in the United States District Court for the
11 Central District of California, before which this action is pending; and

12 (d) Experts and consultants necessarily retained by counsel of
13 record in this litigation, but only if these experts and consultants comply with this
14 agreement in full and read, sign, and agree to be bound by all of its terms.

15 2. "Confidential" -- Information designated as "Confidential" shall be
16 restricted to viewing, copying by, and disclosure to:

17 (a) All "Attorneys' Eyes Only" persons; and
18 (b) All employees, officers, and directors of each party of record. It
19 is not necessary that each such person sign this order, provided that the Receiving Party
20 has previously notified all employees, officers, and directors of the existence of this
21 order, its terms, and the consequences of an unauthorized disclosure.

22 **D. Depositions**

23 1. Any party may designate testimony on oral deposition as
24 "Confidential" or "Attorneys' Eyes Only". The designation of such testimony shall be
25 made at any point during the deposition by so stating on the record and identifying the
26 level of protection desired.

27 2. Once testimony has been designated as "Confidential" or
28 "Attorneys' Eyes Only", only the following persons shall be present for the answer:

- i. Persons authorized under this Order;
- ii. The deponent; and
- iii. The reporter and videographer.

4 3. Each court reporter and videographer participating in any deposition
5 shall be provided with a copy of this Order and shall adhere to its provisions. Each
6 court reporter must separately bind those portions of deposition transcript and related
7 exhibits deemed confidential and shall further separate into separate bound deposition
8 transcripts—by the various levels of confidentiality—and shall thereon place a reasonably
9 conspicuous and prominent designation on the first page of each such bound transcript
10 or exhibits.

11 4. A deponent and/or party shall have until thirty (30) days after
12 receipt of a deposition transcript to designate additional portions of the transcript under
13 this Order.

14 5. Each party shall cause each copy of the transcript in its custody or
15 control or that comes into its custody or control to be immediately marked as
16 designated.

17 6. Prior to the expiration of the thirty (30) days, a deposition transcript
18 and/or the substance of a deponent's answers may be disclosed only to those persons
19 authorized to receive items designated as "Attorneys' Eyes Only" and the deponent.

E. Items Filed with the Court

21 1. When any documents, things, or testimony in whatever form is filed
22 or lodged with Court that is designated as "Confidential" or "Attorneys' Eyes Only",
23 they shall be maintained under seal with the United States District Court for the Central
24 District of California, pursuant to this Order, in any appropriate court procedures, or as
25 otherwise ordered by the Court. In so doing, they will be filed in a sealed envelope. The
26 envelope will contain an indication of the general nature of the contents of the
27 envelope, and shall have endorsed thereon the title and docket number of this action
28 and a boldface label conspicuously placed on the front of the said envelope stating:

1
 2 THIS ENVELOPE CONTAINS DOCUMENTS, THINGS, OR TESTIMONY
 3 WHICH ARE ‘CONFIDENTIAL’ (OR “CONFIDENTIAL-ATTORNEYS’ EYES
 4 ONLY”) AND SUBJECT TO THE TERMS OF A PROTECTIVE ORDER OF THE
 5 UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA. IT
 6 IS NOT TO BE OPENED OR THE CONTENTS DISPLAYED OR REVEALED
 7 EXCEPT TO THIS COURT AND ITS STAFF.

8 2. To the extent practicable, designated items or the substance of
 9 designated items shall be filed separately or in severable portions of filed papers, so that
 10 non-designated items may be freely disseminated.

11 **F. Inadvertent Disclosure**

12 1. The inadvertent or unintentional disclosure of “Confidential” or
 13 “Attorneys’ Eyes Only” or any other privileged or protected item, regardless of whether
 14 the item was so designated at the time of disclosure, shall not be deemed a waiver in
 15 whole or in part of a party’s claim of protection or privilege either as to the specific
 16 information disclosed therein or on the same or related subject matter, provided that the
 17 party later asserting a claim of protection or privilege informs the opposing parties of
 18 its claim within a reasonable time after learning of the disclosure.

19 2. The Receiving Party shall promptly destroy, sequester, or return to
 20 the Disclosing Party any protected or privileged item discovered by the Disclosing
 21 Party to have been inadvertently or unintentionally disclosed to the Receiving Party
 22 upon being notified of the Disclosing Party’s claim of protection or privilege. If the
 23 Receiving Party disclosed the protected or privileged item before being notified of the
 24 Disclosing Party’s claim of protection or privilege, it must take reasonable steps to
 25 retrieve the item for destruction, sequestering, or return to the Disclosing Party.

26 **G. Acknowledgment of Order**

27 Each person required by this Order to sign a statement agreeing to be
 28 bound by the Order must sign a statement to be delivered to and maintained by the

1 Disclosing Party which states the following:

2 I have read the PROTECTIVE ORDER issued by the United States
3 District Court for the Central District of California in the matter of *L.A. Printex*
4 *Industries, Inc. v. Aeropostale, et al.*, case number 08CV07085 DDP (Ex), regarding
5 confidentiality of materials designated by the parties and their counsel. I understand
6 and agree to be bound by the terms of this Order.

7 **H. Agreement of Parties to Order**

8 All parties to this action, their counsel, and all other persons subject to this
9 Order shall be bound by this Order and shall abide by all of the terms of this Order until
10 otherwise ordered by the United States District Court for the Central District of
11 California, or by written notice releasing them from the respective obligations received
12 from the pertinent Disclosing Party.

13 **I. Continuing Effect of Order**

14 At the conclusion of this matter by lapse of all appeal right after entry of
15 final judgment from which no further rights of appeal exist, or by settlement of this
16 matter, each party shall promptly return to the other party all materials designated as
17 confidential and shall thereafter continue to respect all obligations hereunder as to such
18 designated materials. The Receiving Party shall not retain any copies of such materials
19 for any purpose including archival without the express written consent of the
20 Disclosing Party, except:

- 21 1. for archival purposes, the Receiving Party will be entitled to maintain a
22 record by list or directory for the documents that were received and returned; and
- 23 2. outside counsel of record may retain bona fide work product pursuant
24 to all obligations hereunder as to such designated materials.

25 **J. Additional Relief**

26 No party is prevented from seeking relief not provided by this Order, or
27 otherwise seeking relief from the United States District Court for the Central District of
28 California, as may be appropriate to protect its interests or otherwise prepare this matter

1 for trial.

2 **K. Use for This Litigation Only**

3 1. Items designated under this Order shall not be used by any recipient or
4 disclosed to anyone for any purpose other than in connection with the above-captioned
5 action.

6 2. In the event that any party and/or recipient of Confidential Information
7 pursuant to this Order is served with legal process or otherwise requested to disclose
8 any Confidential Information (the "Disclosing Entity") by any person or entity not
9 covered by this Order, including, without limitation, other insurance carriers, state,
10 local or federal agencies, or litigants in other litigation (the "Requesting Entity"), the
11 Disclosing Entity shall give notice thereof, by telephone and facsimile, as soon as
12 practicable but in any event sufficiently prior to the requested disclosure to afford an
13 opportunity to intervene for any party who may be adversely affected by the disclosure
14 except to the extent that such notice is precluded by law.

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16 **IT IS HEREBY ORDERED.**

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19 Dated: 10/22/09



20 Honorable Charles F. Eick
United States Magistrate Judge

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